

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CASE NO. 1:14-CV-954**

**STUDENTS FOR FAIR  
ADMISSIONS, INC.,**

**Plaintiff,**

**v.**

**UNIVERSITY OF NORTH  
CAROLINA et al.,**

**Defendants.**

**JOINT MOTION FOR EXTENSION OF TIME  
FOR CASE DEADLINES**

Pursuant to Fed. R. Civ. P. 6(b) and Fed. R. Civ. P. 16(b)(4), Plaintiff Students for Fair Admissions, Inc. and Defendants The University of North Carolina at Chapel Hill, et al., jointly request that the Court extend the deadlines set forth in the current scheduling order (Dkt. 72) and adopt the following stipulated schedule for expert discovery and summary judgment briefing. The parties further jointly request that the Court remove the October 2018 trial date from the calendar and order that the case not be set for a trial date until summary judgment is decided. Defendant-Intervenors do not object to this motion.

**I. Preliminary Statement**

On August 1, 2016, the Court adopted the proposed discovery plan set forth in the parties' Joint Proposal on the Course of Continued Proceedings (Dkt. 72). Pursuant to

that schedule, the parties completed fact discovery on June 30, 2017. Under that schedule, initial expert reports are due September 1, 2017, all expert discovery is due to be completed by December 1, 2017, any motions for summary judgment are due within 60 days of the close of discovery, motions in opposition to summary judgment are due 30 days after motions for summary judgment, and reply motions are due 14 days after motions in opposition to summary judgment.

On August 9, 2017, the Court ruled on two motions to compel and granted Plaintiff's Motion to Compel Production of Applicant Data (Dkt. 101). In complying with the Court's order, Defendants have begun the process of production (including making preparations to provide notice to the affected applicants in advance of compliance, pursuant to the Family Educational Right and Privacy Act, 20 U.S.C. § 1232g). The parties have met and conferred regarding the timing of these additional productions of data and the period of time necessary for the parties' experts to assess this new data once produced.

The parties believe an extension of the current deadlines is necessary and have agreed, subject to the Court's approval, to extend the deadlines of the current schedule, as proposed below.

## II. Good Cause for Requests

Under Rule 6(b), the court may extend deadlines for “good cause.” Moreover, under Rule 16(b)(4), “[a] schedule may be modified only for good cause and with the judge’s consent.” Such requests “are liberally granted.” *Curtis v. Norfolk Southern Ry. Co.*, 206 F.R.D. 548, 550 (M.D.N.C. 2002); *see also* 4B C. Wright, A. Miller and A. Steinman, *Federal Practice and Procedure*, § 1165 (4th ed. 2015) (“[A]n application for extension of time under Rule 6(b)(1)(A) normally will be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.”).

A modified schedule is necessary and promotes justice for several reasons. Extending the deadlines for expert discovery will allow both sides’ experts time to analyze the data being produced under the Court’s August 9, 2017 order; that data will be produced when Defendants have completed the notice process and provided a reasonable period for objections. The current schedule—which has initial expert reports due September 1, 2017, would require reports to be filed before the data can be produced.

With modifications to expert deadlines, it will be necessary to adjust summary judgment deadlines as well. The parties have requested that summary judgment briefing deadlines be adjusted to allow sufficient time for completion of expert discovery, inclusion of expert work in summary judgment briefing, and preparation of briefs. These extensions are warranted in light of the significance of the case.

With the requested modifications to the schedule, summary judgment will not be completed as of the currently scheduled trial date of October 2018. Moreover, the parties anticipate that they will file cross-motions for summary judgment that will raise issues of great importance. The parties also expect that any trial preparations would require substantial resources. In order to allow the Court time to decide these motions while preserving the parties' resources (and recognizing that the University is a public entity supported by public funds), the parties respectfully request that the Court order that the October 2018 trial date be removed from the calendar and a new date not be reset until summary judgment is decided.

The parties recognize that the requested extensions and schedule modifications push back completion of summary judgment briefing as well as any potential trial of this matter. However, the parties respectfully submit that the modifications are in the interests of justice and do not unfairly prejudice any party. The parties do not request the modifications to unduly delay this matter or for any other improper purpose.

### **III. Proposed Schedule**

For the foregoing reasons, the parties propose the following deadlines:

1. The date proposed for the completion of expert discovery is May 31, 2018. Reports required under Rule 26(a)(2)(B) and disclosures required by Rule 26(a)(2)(C) would be due during the proposed discovery period as follows:
  - (a) Affirmative expert reports by December 15, 2017
  - (b) Rebuttal expert reports by February 28, 2018
  - (c) Reply expert reports by April 13, 2018

- (d) All trial experts would be deposed during the period between April 13, 2018 and May 31, 2018.
- 2. The proposed deadline for filing any motions for summary judgment would be July 27, 2018. Briefs in opposition to summary judgment would be due September 10, 2018, and reply briefs would be due October 10, 2018.
- 3. The parties also jointly request that the Court adjourn the current trial date set for October 2018 and not set another trial date until summary judgment motions are resolved.

**Respectfully submitted this 17th day of August, 2017.**

/s/ Thomas R. McCarthy  
Thomas R. McCarthy  
Consovoy McCarthy PLLC  
3033 Wilson Boulevard, Suite 700  
Arlington, Virginia 22201  
(703) 243-9423  
E: tom@consovoy mccarthy.com

/s/ William S. Consovoy  
William S. Consovoy  
Consovoy McCarthy PLLC  
3033 Wilson Boulevard, Suite 700  
Arlington, Virginia 22201  
(703) 243-9423  
E: will@consovoy mccarthy.com

/s/ J. Michael Connolly  
J. Michael Connolly  
Consovoy McCarthy PLLC  
3033 Wilson Boulevard, Suite 700  
Arlington, Virginia 22201  
(703) 243-9423  
E: mike@consovoy mccarthy.com

/s/ Alan M. Ruley  
N.C. State Bar No. 1647  
Bell, Davis & Pitt, P.A.  
P.O. Box 21029  
Winston Salem, NC 27120-1029  
(336) 714-4147  
E: aruley@belldavispitt.com

*Attorneys for Plaintiff*

JOSH STEIN  
Attorney General

/s/ Stephanie Brennan  
Stephanie Brennan  
Special Deputy Attorney General  
NC State Bar No. 35955  
E: sbrennan@ncdoj.gov

/s/ Matthew Tulchin  
Matthew Tulchin  
Special Deputy Attorney General  
NC State Bar No. 43921  
E: mtulchin@ncdoj.gov  
NC Department of Justice  
Post Office Box 629  
Raleigh, NC 27602-0629  
(919) 716-6920

/s/ Michael Scudder  
Michael Scudder  
Lara Flath  
Marianne Combs  
Skadden, Arps, Slate, Meagher & Flom  
LLP  
155 North Wacker Drive  
Chicago, IL 60606-1720  
(312) 407-0700  
E: michael.scudder@skadden.com  
E: lara.flath@skadden.com  
E: marianne.combs@skadden.com

/s/ Lisa Gilford  
Lisa Gilford  
Skadden, Arps, Slate, Meagher & Flom  
LLP  
300 South Grand Ave.  
Los Angeles, CA 90071  
(213) 687-5130  
E: lisa.gilford@skadden.com

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 17, 2017, I filed a true and correct copy of the foregoing Joint Motion for Extension of Time for Case Deadlines with the Clerk of Court using the CM/ECF system, which will be served on all registered users.

This 17th day of August, 2017.

/s/ Michael Scudder

Michael Scudder

Skadden, Arps, Slate, Meagher &  
Flom LLP

155 North Wacker Drive

Chicago, IL 60606-1720

(312) 407-0700

E: michael.scudder@skadden.com